

Chapter 7. Implementation Structure

This chapter describes the institutional structure and organizational arrangements that will be established to govern and implement the BDCP, and sets out the roles, functions, authorities, and responsibilities of the various entities that will participate in BDCP implementation. The implementation structure is designed to ensure that sufficient institutional expertise, capacity, resources, and focus are brought to bear to accomplish the goals and objectives of the BDCP. It is further designed to promote dynamic and responsive administration of the BDCP, while advancing the goals of continuity, accountability, and transparency in decision-making processes. Through this structure, implementation of BDCP goals and objectives is expected to become increasingly effective.

A well-defined BDCP implementation structure will help ensure effective and efficient plan implementation and ongoing conformance with the terms and conditions of the plan and its associated regulatory authorizations. It will provide for centralized decision-making and oversight regarding the actions and programs that comprise the BDCP conservation strategy, a feature of plan governance that will be essential to addressing Delta complexities and challenges. The approach to implementation described in this chapter will also facilitate the clear delineation of roles and responsibilities among the range of public and private entities participating in the process and help define the nature of their engagement. This approach further reflects the commitment by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (USBR) to maintain and encourage ongoing collaboration among the range of public and private parties with interest in the Delta, and to embrace adaptive and responsive plan implementation, guided by new information and scientific understanding.¹

The implementation structure for the BDCP will be organized around a new “BDCP Program,” jointly created by DWR and USBR, who have responsibility for plan implementation, as specified in the regulatory authorizations.² The BDCP Program will be led by a Program Manager who will serve as a central point of contact. The fish and wildlife agencies will have oversight to assure that the Program is consistent with the regulatory authorizations they issued, and to approve certain Program changes as described in Section 7.3.5. In addition, a BDCP Implementation Committee will be established as a forum where the State and Federal Water Contractor’s Joint Powers Authority (S&FWC), other public agencies, non-governmental organizations, interested parties and the public may offer recommendations on BDCP implementation. To facilitate such engagement, the BDCP implementation structure formally incorporates these entities into the implementation process, designating specific roles and forums to facilitate and reinforce their participation.

¹ The BDCP implementing agreement provides further explanation of specific roles and responsibilities regarding plan implementation and sets out the legal rights and obligations of the entities with responsibilities for BDCP implementation.

² DWR, USBR, and the JPA continue discussions about the JPA’s appropriate role in implementing conservation measures. This draft does not make any assumption as to which of such measures will fall within that role. DWR and USBR could direct the Program Manager to subcontract with the S&FWC JPA or individual water districts to implement or backstop measures. In addition, DWR and its contractors could opt to make uniform amendments to the SWP water supply contracts to implement the BDCP Program. Such uniform amendments were used to implement the Monterey Agreement (see *Amendment No. 25 (the Monterey Amendment) to Water Supply Contract Between the State of California Department of Water Resources [and each individual district]*.)

Program Manager will also coordinate with the newly-created Delta Stewardship Council, Delta Science Program, and Delta Conservancy to ensure appropriate engagement and collaboration on matters of common interest and responsibility.

7.1 Roles and Responsibilities of Entities Involved in BDCP Implementation

This section provides descriptions of the roles and responsibilities under the BDCP Program of the BDCP Program Manager, authorized entities, supporting entities, BDCP Implementation Committee members, and other stakeholders.

[Note to Reviewers: addition intro text may be added here]

7.1.1 The BDCP Program Manager

The primary purpose of the BDCP Program is to centralize and unify responsibility for and oversight of BDCP implementation. The Program Manager will oversee all aspects of plan implementation, including the actions set out in the conservation measures, the monitoring and research program, the adaptive management program, and the public outreach process. In some cases, the Program Manager will oversee the direct implementation of actions; in other cases, other entities may be designated to conduct certain actions. The Program Manager's primary task, however, will be to ensure that the terms and conditions of the BDCP and its associated regulatory authorizations are properly and fully implemented. As part of that responsibility, the Program Manager will coordinate and engage the various entities that will have significant involvement in aspects of plan implementation. These entities, and their expected roles and responsibilities in the implementation of the BDCP, are described later in this chapter. The organizational framework for the involvement of these entities is depicted in Figure 7.1.

The BDCP Program will be jointly established by DWR and USBR and will have the responsibility, capacity, and the resources sufficient to carry out all aspects of BDCP implementation, as specified in the regulatory authorizations. The BDCP Program Manager will be a single individual, designated by the director of DWR and the regional director of USBR after consultation with the fish and wildlife agencies and Implementation Committee (see section 7.1.4 *BDCP Implementation Committee*). The Program Manager will report directly to both directors. The BDCP Program will be staffed primarily by employees of DWR and Reclamation, as well as other State and federal agencies who possess the expertise and experience necessary to carry out the tasks associated with BDCP implementation. The Program Manager and staff will be dedicated, on a full-time basis, to matters related to the BDCP. The specific staffing needs of the BDCP Program will be determined by the directors of DWR and USBR and the Program Manager, with input from the fish and wildlife agencies and Implementation Committee.

The BDCP Program Manager will assume responsibility for the implementation of a broad range of actions, including:

- administration of program resources

- establishment of programs and procedures
- implementation of conservation measures
- management of the monitoring and research and adaptive management programs
- implementation of public outreach program
- fulfillment of compliance monitoring and reporting requirements

The Program Manager will also be responsible for coordinating with the Delta-wide Governance entities (see section 7.2.3 *Coordinating with the Delta Stewardship Council, Delta Science Program, and Delta Conservancy.*)

Specific roles and responsibilities of the BDCP Program Manager are described in further detail in sections 7.2, 7.3, and 7.4.

Figure 7.1.

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7.1.2 Authorized Entities and Regulatory Agencies

The BDCP provides the basis for the issuance of regulatory authorizations, under the federal Endangered Species Act (ESA), the California Natural Community Conservation Planning Act (NCCPA) (and potentially the California Endangered Species Act (CESA)), for the incidental take of listed and unlisted fish and wildlife species that result from Delta water operations and other covered activities (see Chapter 4 *Covered Activities*). The entities that receive incidental take authorizations for activities covered under the BDCP are referred to collectively as the “authorized entities.” The entities that provide regulatory authorizations are referred to collectively as the “regulatory agencies.” Incidental take authorizations will be sought by federal and non-federal entities under the following authorities:

- non-federal entities will seek regulatory coverage pursuant to ESA section 10(a)(1)(B), NCCPA section 2835, and potentially CESA section 2081 or 2080.1 (if applicable), and
- federal agencies will seek regulatory coverage under ESA section 7(a)(2) for federally-listed species.

Each authorized entity will retain full responsibility for proper implementation of the BDCP and compliance with the terms and conditions of the associated regulatory authorizations, regardless of whether another entity is tasked with responsibility for carrying out a required action. However, the authorized entities and the Program Manager may enter into agreements individually, amongst themselves, or with other entities to designate responsibility for carrying out certain actions under the plan.

7.1.2.1 Authorized Entities

The following entities are “authorized entities” for the purpose of the BDCP and its regulatory authorizations. Descriptions of the activities that will be covered under the regulatory authorizations issued to the authorized entities are set out in Chapter 4 *Covered Activities*.

California Department of Water Resources

The State of California owns, and DWR manages and operates, the State Water Project’s (SWP) existing Delta facilities, including the Clifton Court Forebay and the Banks Pumping Plant. Pursuant to the BDCP, DWR seeks State and federal regulatory authorizations to continue to operate such facilities. The State of California, through DWR, will construct, own, and operate any new diversion and conveyance facilities described in this plan.

United States Bureau of Reclamation

The United States owns, and USBR operates, the Central Valley Project’s (CVP) existing Delta facilities, including the Jones Pumping Plant and the Delta Cross Channel. Consistent with the BDCP, USBR seeks federal regulatory authorizations to continue to operate these facilities. USBR will likely enter into an agreement with DWR to wheel CVP water through a new conveyance facility.

Mirant Corporation

Mirant owns and operates the Pittsburg and Contra Costa Power Plants located in Pittsburg and Antioch. Mirant seeks regulatory permits under ESA section 10 and Fish and Game Code section 2835 for the continued operation of those plants.

Other Authorizations

To the extent necessary and applicable, the authorized entities will also seek and obtain authorizations or permits under other applicable State and federal laws that are necessary for the implementation of the BDCP. Such authorizations, for instance, may be required pursuant to: California Water Code sections 1000 et seq. (water rights), Water Code sections 13000 et seq. (water quality), California Fish and Game Code sections 1600 and 5900 et seq. (fish screens, channel modification), and Clean Water Act section 404 (fill of waters of the United States).

7.1.2.2 Regulatory Agencies

California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife. DFG administers and enforces CESA, the NCCPA and other provisions of the Fish and Game Code. DFG is authorized to enter into agreements with federal and local governments and other entities for the conservation of species and habitats, to authorize take under CESA and the NCCPA, and to provide statutory assurances under NCCPA.

National Marine Fisheries Service

NMFS is an agency of the United States Department of Commerce authorized by Congress to administer and enforce FESA with respect to marine mammals and certain fish species (including anadromous fish), to enter into agreements with states, local governments, and other entities to conserve federally threatened, endangered, and other species of concern, to authorize incidental take under FESA, and to provide regulatory assurances in accordance with 50 C.F.R. section 222.307(g).

United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce FESA with respect to terrestrial wildlife, certain fish species, insects and plants, to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern, to authorize incidental take under FESA, and to provide regulatory assurances in accordance with 50 C.F.R. section 17.22(b)(5) and section 17.32(b)(5).

[Note to Reviewers: additional text will be included to discuss roles of other regulatory agencies, such as the SWRCB and the ACOE]

7.1.3 Supporting Entities

“Supporting entities” are those agencies, organizations, or individuals that are not authorized entities, but that are contracted or otherwise engaged by the BDCP Program Manager or authorized entities to implement one or more plan actions.

The Program Manager may enter into agreements with supporting entities for implementation of specific plan elements or actions. The relevant take authorizations held by an authorized entity will cover each supporting entity for take of species or for other environmental impacts associated with the specific element or action. The Program Manager or authorized entity will oversee each supporting entity’s performance of its responsibilities for plan implementation. The Program Manager or authorized entity may terminate a supporting entity’s responsibility for tasks which the supporting entity does not perform adequately.

Decisions by the Program Manager to enter into agreements with supporting entities for the implementation of specific plan elements or actions will be based on the entity’s jurisdictional authority, level of expertise, and its capacity to carry out the element or action in a timely and successful manner. Supporting entities may include, among others:

- S&FWC, the State Water Contractors JPA (SWC), the San Luis and Delta Mendota Water Authority (SLDMWA) or individual SWP and CVP contractors.
- The Sacramento-San Joaquin Delta Conservancy (Delta Conservancy), to carry out certain functions related to land acquisition, habitat restoration, and management. The Delta Conservancy has been designated the primary state agency to implement ecosystem restoration in the Delta. The Delta Conservancy will receive appropriations from the legislature and can accept public funds directly or through State or federal agencies for the purpose of carrying out such actions.
- Other public agencies and private entities that have jurisdiction, capacity, and expertise to implement actions described in the conservation strategy in a cost-effective, reliable, and timely manner.
- Sponsors of regional conservation planning programs, including those engaged in NCCP and/or HCP development or implementation, or of other similar conservation programs, that overlap or are adjacent to the BDCP Plan Area to collaborate or carry out actions that advance BDCP goals and objectives.
- State and federal regulatory agencies, including USFWS, NMFS, and DFG. In addition to their regulatory role(s), other state and federal agencies may enter into agreements to implement elements or actions, assist in technical matters, and participate in decisions regarding the implementation of certain conservation measures.

7.1.4 BDCP Implementation Council Committee

³ With the creation of the Delta Stewardship Council, “Implementation Committee” is used to prevent confusion.

An “Implementation Committee”³ will be formed to provide a forum in which participating public agencies and private entities consider and discuss matters related to plan implementation. The Implementation Committee, which will consist of the participating entities and representatives of stakeholder organizations, will convene on a regular basis to exchange information and provide input concerning the current significant issues at hand. Stakeholders, in particular, will have opportunity to inquire about implementation matters, be apprised by the Program Manager of issues of interest, and make recommendations concerning pending decisions.

Voting member on the Committee will likely include, but not be limited to:

- representative of the S&FWC JPA
- other members of the BDCP Steering Committee, serving as of the effective date of the BDCP;
- representatives of Delta counties and other local Delta government agencies; and
- other stakeholders whose assistance will increase the likelihood of the success of plan implementation.

Ex-officio non-voting members of the Committee will include, but not be limited to:

- the BDCP Program Manager
- the DWR Director
- the USBR Regional Director
- the DFG Director
- the USFWS Regional Director
- the NMFS Regional Administrator
- Executive Officer of the Delta Stewardship Council
- Executive Officer of the Delta Conservancy
- Executive Officer of the Delta Protection Commission
- Lead Scientist, Delta Science Program

The BDCP Program Manager will meet with the Implementation Committee on a regular and frequent basis, and will submit key documents and information, such as annual implementation reports, work plans, and budgets, to the Committee for review and input. The BDCP Program Manager, authorized entities, and regulatory agencies will periodically coordinate with Committee members on past activities and upcoming plans related to water supply operations, actions associated with conservation measures, and adaptive management and monitoring. The purpose of this coordination will be to maximize transparency regarding the decision-making process and facilitate the exchange of information and analysis; provide opportunity for comment, input, and recommendations; ensure meaningful discussions regarding the rationale for decisions and the outcomes that result. This coordination will complement, but not substitute for, ongoing collaboration and communication between the BDCP Program Manager, authorized entities, and the regulatory agencies concerning oversight of plan implementation and the

³ With the creation of the Delta Stewardship Council, “Implementation Committee” is used to prevent confusion.

regulatory authorizations. The Program Manager will organize, help convene, and provide support for the Implementation Committee and its proceedings.

The BDCP Implementation Committee will be chartered under the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App.).⁴ FACA provides additional detail regarding the roles and responsibilities of advisory groups and requires, but is not limited to:

- Balanced membership among a variety of viewpoints;
- A federal representative to chair or attend each meeting; and
- Publicly noticed and publicly held meetings with an opportunity for interested persons to participate.

7.1.5 Other Stakeholders

The BDCP implementation process will also provide for ongoing and frequent engagement and participation of the public. Other entities that have interests in such matters as the export of Delta water or the conservation of Delta resources, may participate in BDCP implementation through the public outreach process (see section 7.4 Public Outreach) or through the BDCP Implementation Committee, if eligible for membership.

7.1.6 Dispute Resolution Procedure

A dispute resolution procedure will be available to Implementation Committee members and other parties who wish to participate. The dispute resolution procedure will be a non-binding process to resolve disputes related to the adequacy of plan implementation, including the efficacy of the adaptive management program. The dispute resolution procedure is designed and will be implemented to minimize the risk and scope of legal challenges related to plan implementation. The agreement of parties to engage in the dispute resolution process, however, will not compromise or otherwise affect their existing legal rights. The dispute resolution procedure is generally intended to address matters prospectively, such as periodic review of plan implementation to improve going-forward performance.

7.2 Administration of the BDCP Implementation Process

Upon its creation, the BDCP Program will be provided with sufficient resources, authority, and capacity to carry out BDCP implementation tasks for which it is given responsibility. Proper implementation of the plan will require a skilled and expert team consisting of administrators, policy-makers, scientists, engineers, and regulatory specialists, capable of working together in a cohesive and unified manner. In addition, effective implementation will necessitate adequate financing of and support for the BDCP

⁴ The Implementation Committee is characterized as a FACA-chartered group because it is described “as making recommendations regarding pending decisions.” It is likely that, in addition to coordinating with the state agencies, the Committee will want to provide input and advice to Reclamation, regarding CVP coordinated operations and to USFWS and NMFS regarding BDCP conservation actions, including adaptive management. To make recommendations to federal agencies, it appears likely the group would either have to be empowered by federal statute or would have to be a FACA advisory committee. If the group was not empowered by statute or FACA to make recommendations then it could be non-voting, information-receiving body whose individual members could make their own recommendations but who, collectively, could not vote to provide consensus advice.

Program. The new BDCP Program will have such capacity to carry out the responsibilities set out in this chapter. The following sets out the primary administrative functions of the Program Manager.

As part of his or her administrative responsibilities, the Program Manager may assign implementation tasks to other entities, including the authorized entities and supporting entities. Where specific responsibilities are designated to another entity, the Program Manager will ensure that that entity's tasks and responsibilities are carried out properly and in coordination with other BDCP actions.

The Program Manager's responsibilities will include:

Establishing Administrative Capacity. The Program Manager will arrange for and equip the Program's office space, hire a staff, and enter into contracts to build its capacity to become fully functional and operational.

Preparing Budgets and Managing Expenditures. The Program Manager will develop, propose, and administer budgets for general program administration. He or she will establish systems and processes to centralize oversight of implementation budgets and related expenditures. The Program Manager will also generally oversee budgets and expenditures related to implementation actions carried out by authorized or supporting entities.

Contracting for Services.

The Program Manager may contract for services as necessary to implement the BDCP, including for professional services related to:

- Habitat restoration and management
- Monitoring and scientific research
- Technical and legal services (e.g., regulatory compliance)
- Funding and grant agreements pertaining to state and federal programs and executing sub-grants to third-parties to conduct specific actions

Securing, Holding, and Managing Funds to Support Implementation Actions.

The Program Manager will coordinate the expenditure of State and federal BDCP funding. To the extent allowable by law, the Program Manager will serve as the fiscal agent for the expenditure of funds, from both public and private sources, to support implementation actions.

7.2.1 Coordinating with Authorized Entities, Regulatory Agencies, Supporting Entities, and the Implementation Committee

The Program Manager will convene meetings and facilitate communication among the authorized and supporting entities, the regulatory agencies, and the Implementation Committee. The Program Manager will maintain frequent contact with these entities and the Implementation Committee and provide regular updates concerning implementation matters, including progress in meeting BDCP timetables, dissemination of information, and maintenance and availability of BDCP records and reports.

7.2.2 Coordinating with the Fish and Wildlife Agencies

The Program Manager will also coordinate and collaborate with the USFWS, NMFS, and DFG (collectively "fish and wildlife agencies"), regarding matters potentially affecting compliance with the

terms and conditions of the BDCP and its regulatory authorizations. As part of the compliance monitoring process, the Program Manager will prepare all related reports and ensure that those reports are accurate, complete, and timely. The Program Manager will facilitate appropriate and sufficient input from the authorized entities and the Implementation Committee regarding compliance-related reports and documents.

The Program Manager will convene an Implementation Working Group of the authorized entities and the fish and wildlife agencies to provide for close ongoing coordination and issue identification and resolution in the ongoing implementation of the plan.

7.2.3 Coordinating with Delta Stewardship Council, Delta Science Program, and Delta Conservancy-

The Sacramento San Joaquin Delta Reform Act of 2009 (the Delta Act) (Water Code §§ 85000 et seq.) establishes the Delta Stewardship Council as a Delta-wide governance structure and successor to the California Bay-Delta Authority. (Water Code § 85034.) The Program Manager will coordinate with the Delta Stewardship Council to ensure that the authorized BDCP is incorporated into the Comprehensive Delta Plan (Delta Plan). (Water Code § 85320.) The Delta Act requires the Stewardship Council to establish a committee of agencies responsible for implementing the Delta Plan. (Water Code § 85204). The Program Manager will coordinate with the committee of agencies and also be responsible for reporting, at least annually, to the Stewardship Council on the progress of BDCP implementation, including the status of monitoring programs and adaptive management, as required by Water Code section 85320(f).

The Delta Act also establishes the Delta Independent Science Board (Delta ISB) and requires the Stewardship Council to appoint a lead scientist to implement a Delta Science Program. The purpose of the Delta Science Program is to provide unbiased scientific information to inform water and environmental decisionmaking in the Delta. (Water Code § 85280.) The Program Manager will coordinate with the Delta Science Program, and, as necessary, the Delta ISB, regarding scientific oversight and assistance in formulating and implementing monitoring and research to support permit compliance and the BDCP adaptive management process.

The Sacramento-San Joaquin Delta Conservancy Act (Public Resources Code § 32300 et seq.) creates the Delta Conservancy within the Natural Resources Agency. (Pub. Resources Code § 32320.) The Program Manager will also be responsible for working with the Delta Conservancy to assure that the BDCP conservation Strategy is incorporated into the Delta Conservancy's Strategic Plan.

7.2.4 Coordinating with Other Local, State, and Federal Agencies-

The Program Manager will also serve as the main point of contact for local, state, and federal agencies interested or engaged in BDCP implementation issues. The Program Manager will prepare, publish, and distribute general information about the BDCP to those agencies and serve as representative of the BDCP in public meetings convened by cities, counties, and other public agencies with jurisdiction within the Delta. With respect to ongoing input by and participation of interested public and private entities in BDCP implementation matters, the Program Manager will facilitate the establishment of forums to further such engagement.

[Note to Reviewers: Additional text to be provided regarding role of other state and federal agencies that provide regulatory authorizations to implement BDCP, including SWRCB and ACOE]

Protecting and Defending Against Legal Challenges.

The Program Manager, in coordination with the authorized entities, regulatory agencies, and other appropriate supporting entities, will help direct efforts to defend against legal challenges to the BDCP or its associated State and federal authorizations. As necessary, the Program Manager may hire staff counsel to address the range of legal issues associated with implementation, including: defense against litigation related to the BDCP, liability associated with land acquisition and related matters, disputes arising out of contractual agreements, and general, routine in-house legal matters. In addition, to minimize the potential for litigation to arise, the Program Manager will provide resources to the Implementation Committee and support and advance the dispute resolution process.

Overseeing Plan Amendments

In the event that the BDCP requires amendment to maintain ongoing compliance with ESA and/or the NCCPA (or potentially CESA), the Program Manager will compile information and prepare documentation necessary to support such an amendment and obtain the necessary approvals from the applicable fish and wildlife agency.

Undertaking Additional Responsibilities.

The BDCP Program will include compliance monitoring. The BDCP Program Manager will provide the fish and wildlife agencies, on a mutually-agreeable time-frame, with reports on the results of the monitoring program (see section 7.3 *Implementation of the Conservation Strategy*). The Program Manager will also obtain other regulatory authorizations and permits necessary to implement BDCP conservation actions (see section 7.4) and will engage in public outreach and education (see section 7.5)

7.3 Implementation of the Conservation Strategy

The Program Manager will be responsible for the implementation of the BDCP conservation strategy (see chapter 3 *Conservation Strategy*). However, the Program Manager may exercise his or her discretion to either rely on the Program's own capacity to carry out an action or assign the task to another entity. It is anticipated that the flexibility to use authorized, regulatory, and supporting entities to undertake certain actions will enhance the overall effectiveness of the conservation strategy and yield greater efficiencies in plan implementation. The following sets out the tasks and responsibilities of the Program Manager regarding the implementation of the conservation strategy.

7.3.1 Implementing Habitat Protection and Restoration Conservation Measures

The Program Manager will implement conservation measures related to the protection of existing habitat and the enhancement and restoration of habitat within the identified restoration opportunity areas (ROAs), as well as within other areas of the Delta and areas outside of the Delta (e.g., Suisun Marsh and upper Yolo Bypass), as described in chapter 3 *Conservation Strategy*. These measures will primarily

involve actions to acquire lands, restore or improve habitat conditions, and manage and maintain habitat preserves. The Program Manager will work with the Delta Conservancy and other appropriate agencies and supporting organizations to accomplish the conservation measures associated with habitat protection and restoration.

Acquiring and/or leasing property interests. The Program Manager, on behalf of the BDCP Program, will acquire or provide funding for acquisitions of, or interests in, real property by authorized, regulatory, or supporting agencies, as described in chapter 3 *Conservation Strategy*. The tasks related to the acquisition of fee interests and/or conservation easements, for the purpose of habitat protection, restoration, and creation, will include, among other things:

- routine “due diligence” review of real property
- biological “due diligence” to assess habitat/restoration values
- appraisal of property, including oversight of the appraisal process
- negotiation and execution of the transaction
- receipt of title or easement to lands

The Program Manager will also acquire or lease lands or facilities for the purpose of conducting scientific research and monitoring, housing administrative offices and equipment, and undertaking other activities as necessary to administer and implement the plan.

Managing Land. The Program Manager will work with authorized, regulatory, or supporting agencies to manage and maintain lands acquired for conservation, as described in chapter 3 *Conservation Strategy*. Tasks associated with land management will generally include:

- Habitat management,
- Invasive species control,
- Security patrol
- Liaison with neighboring landowners
- Species and habitat monitoring
- Public access management
- Educational services
- Agricultural lease management

Maintaining Property, Facilities, and Improvements. The Program Manager will maintain or provide for the maintenance, by authorized, regulatory, or supporting agencies of lands acquired for conservation, including all related facilities and improvements, such as buildings, fences, levees, roads, as described in chapter 3 *Conservation Strategy*.

Funding Activities of Other Entities. The BDCP Program will provide funding to other entities (such as local governments engaged in regional conservation planning processes) who partner to implement habitat and species conservation efforts, both inside and outside the Delta, that help advance the biological goals and objectives of the BDCP, as described in chapter 3 *Conservation Strategy*.

7.3.2 Implementing Water Operations Conservation Measures

The Project Operations Response Team (PORT) is comprised of representatives from USBR, DWR, and the fish and wildlife agencies. This management-level team is established to facilitate timely decision-support and decision-making to coordinate the operation of the CVP and SWP with fishery needs and is the successor to the Water Operations Management Team (WOMT), which was established in 1999. The PORT will integrate into its process those BDCP conservation measures that relate to the real-time operation of the SWP and the CVP. In making decisions, the PORT utilizes technical team recommendations which are then reviewed by the agencies' staff and management and used as a basis for developing modifications of water project operations. If the PORT cannot reach consensus, the fishery agencies retain their authority for any legally-required action.

The Program Manager will be responsible for maintaining PORT process transparency and will track, monitor, and coordinate reports to the Implementation Committee regarding PORT decisions which implement the water operation conservation measures set out in the BDCP. The Program Manager will also coordinate with the Implementation Committee, as necessary, to facilitate workshops or other forums for the review and refinement of BDCP water operations conservation measures.

To assure the transparency the ongoing real time water operations the BDCP Program will use the following annual process:

- By October 30 of each year the Program Manager will provide a projected operations plan for the coming year to the Implementing Committee.
- Subsequently the Program Manager will report monthly to the Implementing Committee on water operations and fish protection actions taken by the PORT with supporting biological data and rational, and any variation from the annual operations plan.
- By September 15 the Program Manager will submit a review and assessment of the past years operations to the Implementation Committee. The report will be reviewed by a panel convened by the Delta Science Program and include recommendations for changes to the coming years operational plan.

Real-Time Operations for Conservation of Protected Species. The PORT will, on a day-to-day, weekly, or other mutually-agreeable basis, to make determinations regarding real-time operations of the SWP and the CVP facilities within the parameters of the BDCP conservation measures.⁵ The PORT will make such discretionary judgments on the basis of the needs of covered fish species and the aquatic ecosystem generally. The PORT will confer with, and seek input from, BDCP Program staff or entities responsible for other aspects of authorized operations of covered facilities. The specific protocols for real-time operations are described in Chapter 3 and will be reflected in authorizations issued pursuant to this plan.

The PORT will also be responsible for implementing changes associated with the adaptive management of water operations per the procedure described in Figure 3.12 *BDCP Adaptive Management Decision Making Process*.

⁵ This draft assumes that Chapter 3 will specify operational criteria for real-time operations.

For the purpose of illustration, a specific conservation measure may require by-pass flows at a particular location in year 2012, and may specifically allow flexibility to operate between 6 and 8 units at a given time. Further assume that by-pass flows of less than 6 or greater than 8 are within the adaptive management range and subject to either routine or non-routine changes. The PORT may exercise discretion to direct operations between 6 and 8 units of by-pass flows. If, as a result of adaptive management per Tables 3.4 and 3.5 and Figure 3.12, the discretionary range of bypass flows is changed to 6 to 7 units, the PORT will thereafter operate between 6 and 7 units.

Notwithstanding the goal of the PORT to achieve consensus on decisions, the authorized entities will retain ultimate legal responsibility for project operations and compliance with the plan and regulatory authorizations. Similarly, the fish and wildlife agencies will retain legal authority to oversee, enforce, modify, or revoke such authorizations.

In making real-time decisions regarding the implementation of project operations-related conservation measures, the PORT utilizes data, information, and analysis generated from currently established fisheries and operational technical teams. Specifically, the PORT will take into account real-time data derived from work conducted by the following teams, including current fish surveys, flow and temperature information, and determinations regarding salvage or loss at the project facilities; and information about public health, safety, and water supply reliability:

- **The Sacramento River Temperature Task Group (SRTTG):** The SRTTG is a multiagency group formed pursuant to SWRCB Water Rights Orders 90-5 and 91-1, to assist with improving and stabilizing Chinook population in the Sacramento River. Annually, Reclamation develops temperature operation plans for the Shasta and Trinity divisions of the CVP. These plans consider impacts on winter-run and other races of Chinook salmon, and associated project operations. The SRTTG meets initially in the spring to discuss biological, hydrologic, and operational information, objectives, and alternative operations plans for temperature control. Once the SRTTG has recommended an operation plan for temperature control, Reclamation then submits a report to the SWRCB, generally on or before June 1st each year. After implementation of the operation plan, the SRTTG may perform additional studies and commonly holds monthly meetings, as needed through the summer and into fall, to develop revisions based on updated biological data, reservoir temperature profiles and operations data. Updated plans may be needed for summer operations protecting winter-run, or in fall for fall-run spawning season. If there are any changes in the plan, Reclamation submits a supplemental report to SWRCB.
- **Smelt Working Group (SWG):** The SWG evaluates biological and technical issues regarding delta smelt and develops recommendations for consideration by the USFWS. Since the longfin smelt became a state candidate species in 2008, the Working Group has also developed for DFG recommendations to minimize adverse effects to longfin smelt. USFWS chairs the group which consists of representatives from USFWS, DFG, DWR, EPA, and Reclamation. The SWG compiles and interprets the latest near real-time information regarding state- and federally-listed smelt, such as stages of development, distribution, and salvage. If they agree that a protection action is warranted, the SWG submits their recommendations in writing to USFWS and DFG. The Delta Smelt Risk Assessment Matrix (DSRAM) outlines the conditions when the Working Group will convene to evaluate the necessity of protective actions and provide FWS with a recommendation.

This generally occurs weekly during the months of January through June, when smelt salvage at CVP and SWP has occurred historically. However, the SWG may meet at any time at the request of USFWS. Further, with the State listing of longfin smelt, the group will also convene based on longfin salvage history at the request of DFG.

- **Delta Operations for Salmon and Sturgeon (DOSS) Group:** NMFS chairs this working group, which consists of biologists, hydrologists and other staff with relevant expertise from USBR, DWR, DFG, and USFWS and may include USGS, EPA, and Regional Water Quality Control Board participation. The DOSS provides recommendations for real-time management measures to reduce adverse effects to salmonids and green sturgeon by coordinating Delta Cross Channel (DCC) gate operations, fishery protection closures, water releases, and/or export reductions. Inputs such as fish life stage and size development, current hydrologic events, fish indicators (such as catch indices), salvage at the export facilities, and current and projected Delta water quality conditions are some of the factors used to make recommendations. The DOSS will coordinate with the SWG and other technical teams to maximize benefits to all listed species.
- **American River Group (ARG):** In 1996, USBR established a working group for the Lower American River, known as ARG. Although open to the public, the ARG meetings generally include representatives from several agencies and organizations with on-going concerns and interests regarding management of the Lower American River. The formal members of the group are Reclamation, FWS, NMFS, and DFG. The ARG convenes monthly or more frequently if needed, with the purpose of providing fishery updates and reports for Reclamation to help manage Folsom Reservoir for fish resources in the Lower American River.
- **San Joaquin River Technical Committee (SJRTC):** The SJRTC meets to plan and implement VAMP each year, and oversees two subgroups: Biology and Hydrology. These two subgroups are charged with certain responsibilities, and must also coordinate their activities within the San Joaquin River Agreement (SJRA) Technical Committee.
- **DCC Project Work Team:** A multiagency group which determines and evaluates the effects of DCC gate operations on Delta hydrodynamics, water quality, and fish migration. The work team coordinates with the Data Assessment Team and Operations and Fisheries Forum groups to conduct gate experiments and members may be used as a resource to estimate impacts from real time gate operations.

7.3.3 Implementing Other Stressors Conservation , Measures

The Program Manager will be responsible for the implementation of the other stressor conservation measures. The role of the Program Manager will include both direct involvement in the implementation of measures and the funding and monitoring of actions that will be undertaken by supporting entities, as described in chapter 3 *Conservation Strategy*. The funds directed to supporting entities will likely target efforts focused on addressing the adverse effects of such stressors as toxic contaminants, non-native predatory species, low dissolved oxygen zones, and entrainment unrelated to covered activities.

7.3.4 Overseeing Biological Monitoring, Scientific Research, and Reporting

The Program Manager will be responsible for the overall management and oversight of the BDCP monitoring and research program and for the implementation of monitoring-related activities, as described in chapter 3 *Conservation Strategy*. The Program Manager will establish the framework for the monitoring program (*e.g.*, scope, methodologies, and protocols) in consultation with the authorized entities, fish and wildlife agencies, the Science Program, and supporting entities. The Program Manager, working with those entities and the Science Program, will develop and implement a process for compiling, evaluating, and synthesizing the results of monitoring activities, and will maintain databases and the results of data analysis, obtained through the monitoring program. As appropriate, the Program Manager, authorized entities, or fish and wildlife agencies will seek and obtain independent scientific advice and input through the Science Program.

The Program Manager working with the Science Program will also manage the BDCP research program, as described in chapter 3 *Conservation Strategy*, which will include establishing research goals and priorities and administering a process to select and coordinate researchers who will be involved in the program. The Science Program will compile and synthesize the results of studies and analysis undertaken by other entities and organizations that are of interest and assistance to BDCP implementation. The Program Manager working with the Science Program will also coordinate BDCP funding for research by other entities and organizations, as described in chapter 3 *Conservation Strategy*.

In addition, the Program Manager will track plan implementation actions and comply with the reporting requirements of the plan, as described in chapter 3 *Conservation Strategy* and chapter 6 *Implementation Plan*. Reports prepared by the Program Manager will include, among other things, the results of monitoring and research, an assessment of overall plan performance, and an accounting of the distribution and expenditures of funding by the various entities engaged in plan implementation activities.

7.3.5 Overseeing the Adaptive Management Program

The Program Manager will manage the BDCP adaptive management program, as described in chapter 3 *Conservation Strategy*. Among other things, the Program Manager working with the Science Program will assemble, synthesize, and analyze the results of BDCP monitoring efforts and integrate the results of new and relevant scientific research and studies conducted by other parties. Based on this information and independent science advice, the Program Manager will recommend as appropriate program changes within the adaptive management framework described in Chapter 3. The Program Manager will facilitate and coordinate discussion and consideration of adaptive management issues among the various participating entities, including the authorized entities, fish and wildlife agencies, and the Implementation Committee in order to facilitate decision-making regarding changes in implementation of the Plan.

As the plan is implemented it is expected that some implementation actions and decision will be determined to be minor or routine and will not need to be made as part of the adaptive management process. These actions and decisions will be identified through consultation with the Implementation Working Group and the Implementation Committee. Once so designated such decisions will be made the Program Manager and reported to the Implementation Committee.

It is recognized that the environmental baseline and the status of covered species at the outset of the BDCP are such that few variations from the Plan will be considered to be routine by the Program Manager, the authorized entities, or the fish and wildlife agencies. However, as conservation measures are implemented over time, it is likely that certain actions and decisions will be characterized as routine. Once determined to be routine, the Program Manager will be able to undertake minor adjustments to conservation measures, without the need for extensive coordination with the other entities, thereby encouraging efficiency and timeliness.

Plan implementation and adaptive management responses not expected to be categorized as routine include: any change in the water operating criteria, discontinuation of a conservation measure, expansion of a conservation measure, and the addition of a new conservation measure. The Program Manager will consult with the Implementation Working Group on ongoing implementation issues which may require changes in how the plan or specific actions are implemented to determine if they need to be considered as part of the adaptive management process. Further details regarding the decision-making process for adaptive changes to the BDCP conservation strategy are provided in section 3.6 *Adaptive Management Plan*.

The Program Manager, authorized entities, fish and wildlife agencies, and the Implementation Committee will agree upon the plan implementation actions, responses, or categories of responses, that should be considered routine.

The Program Manager will establish at the outset of plan implementation a process for identifying routine plan implementation actions and decisions that are carried out by the Program Manager. They will be identified in the reports submitted to the fish and wildlife agencies and the Implementation Committee, providing the opportunity for review and input regarding those responses.

7.3.6 Implementing Measures in Response to Changed Circumstances

The Program Manager will be responsible for recognizing and responding to those changed circumstances identified in the plan, and for implementing those measures set out in the BDCP to address those changed circumstances, as described in chapter 6 *Implementation Plan*. The Program Manager will establish a process to ensure timely engagement of the authorized entities, fish and wildlife agencies, and the Implementation Committee in the identification and response to such changed circumstances.

7.4 Regulatory Compliance Related to the Implementation of the BDCP

The Program Manager will be responsible for ensuring that the BDCP is properly implemented, including ongoing compliance with the elements of the plan and the terms and conditions of its associated permits and authorizations. The Program Manager will also identify, seek, and obtain from State and federal agencies any other regulatory permits or authorizations that are necessary to effectuate plan implementation.

7.4.1 Maintaining Permits/Authorizations and Obtaining Amendments

The Program Manager will establish a process to ensure compliance with all permits and authorizations related to BDCP implementation. If amendments or modifications to any of these permits or authorizations become necessary, the Program Manager and the authorized entities will work with the applicable agency to develop the necessary documentation and obtain the amendment.

7.4.2 Obtaining Additional Regulatory Authorizations

The Program Manager will identify and seek regulatory authorizations necessary to implement BDCP actions. The EIR/EIS for the BDCP may provide sufficient environmental review and analysis of the proposed adoption of the plan by DWR, and of the proposed issuance of take authorizations by the State and federal fish and wildlife agencies pursuant to the Plan, as well as of other anticipated federal and State regulatory authorizations. However, additional NEPA and CEQA review, as well as compliance with other environmental laws, will be necessary for a number of BDCP-related actions.

The BDCP Program will likely need to obtain permits or authorizations, or conduct environmental review, under the following State and federal laws, regulations, or processes prior to the implementation of certain conservations measures:

- Sections 404 and 401 of the Clean Water Act
- Sections 10 (33 USC 403) and 14 (33 USC 408) of the Rivers & Harbors Act of 1899
- Section 1602 of the California Fish and Game Code (Streambed and Lakebed Alteration Agreements)
- Section 106 of the National Historic Preservation Act
- Encroachment permits from the Central Valley Flood Protection Board and reclamation districts to conduct work on levees
- The National Environmental Policy Act and the California Environmental Quality Act, as necessary for certain project-related actions

7.5 Public Outreach

The Program Manager will implement a public outreach and education program for public input on matters concerning plan implementation. General objectives of the outreach program will be to:

- Promote public awareness of and understanding about the plan's purpose, specific conservation measures and their implementation
- Provide streamlined and timely access to information
- Provide contact with decision-makers
- Maintain a transparent process for understanding, clarifying and addressing public input and comments

Particular emphasis will be placed on outreach efforts focused on the following stakeholders:

- Delta residents, including landowners, farmers, and business people
- Environmental community

- Agricultural community
- Boaters
- Commercial fishing interests
- Recreational anglers
- Local governments
- Reclamation districts
- Irrigation districts
- Public utilities
- Public and private landowners adjacent to BDCP conservation areas
- Native American Tribes

The public outreach and education program will include, at a minimum:

- **Informational Material.** The preparation and distribution of general information materials such as reports, quarterly electronic newsletters, and issue-specific fact sheets in timely manner so as to facilitate public understanding and meaningful public input.
- **Interactive Website.** Development and maintenance of an interactive website that provides real-time access to information, updates regarding implementation activities, and expanded opportunities for public engagement and input. Visual elements such as maps and webcasts will be used to further aid information sharing and public understanding.
- **Speakers Bureau.** Presentation of BDCP implementation information to various groups and at public meetings that occur throughout the state, as well as targeted audiences including Delta communities, Tribes, and specific statewide stakeholder interests.
- **Annual Public Workshops.** Commitment to annual public workshops and others as needed to provide timely opportunities for public dialogue, input and comment regarding a wide range of implementation issues.
- **Environmental Justice.** An environmental justice outreach program will be integrated into overall outreach activities described above to provide minority and low-income communities with access to information about the plan's implementation and opportunities for input. Outreach techniques include dedicated multilingual web page, availability of translation services at public workshops and community presentations, and outreach to ethnic media outlets.